

PART 516—AUSTRIA

Subpart—Withholding of Tax

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Subpart—Withholding of Tax

§ 516.1 Introductory.

(a) *Pertinent provisions.* The income tax convention between the United States and the Republic of Austria, signed on October 25, 1956, referred to in this part as the convention, provides in part as follows, effective on and after January 1, 1957:

ARTICLE I

(1) The taxes referred to in this Convention are:

(a) In the case of the United States of America: The federal income taxes, including surtaxes.

(b) In the case of the Republic of Austria: The Einkommensteuer (income tax), the Koerperschaftsteuer (corporation tax) and the Beitrag vom Einkommen zur Foerderung des Wohnbaues und fuer Zwecke des Familienlastenausgleiches (housing reconstruction and family allowance contribution).

(2) The present Convention shall also apply to any other income or profits tax of a substantially similar character which may be imposed by one of the contracting States after the date of signature of the present Convention.

ARTICLE II

(1) As used in this Convention:

(a) The term "United States" means the United States of America, and when used in a geographical sense means the States, the Territories of Alaska and Hawaii, and the District of Columbia;

(b) The term "Austria" means the Republic of Austria;

(c) The term "enterprise of one of the contracting States" means, as the case may be, a United States enterprise or an Austrian enterprise;

(d) The term "United States enterprise" means an industrial or commercial enterprise or undertaking carried on in the United States by a natural person (including an individual in his individual capacity or as a member of a partnership) resident in the United States or by a United States corporation or other entity; the term "United States corporation or other entity" means a corporation or other entity created or organized under the law of the United States or of any State or Territory of the United States;

(e) The term "Austrian enterprise" means an industrial or commercial enterprise or undertaking carried on in Austria by a natural person (including an individual in his individual capacity or as a member of a partnership) resident in Austria or by an Austrian corporation; the term "Austrian corporation" means a corporation or other entity created or organized under the law of Austria;

(f) The term "permanent establishment" means a branch, office, factory, workshop, a warehouse, a merchandising establishment, a mine, oil well or other place of exploitation of the ground or soil, a construction or assembly project or the like, the duration of which exceeds or will likely exceed twelve months, or other fixed place of business; but does neither include the casual and temporary use of mere storage facilities, nor an agent or employee unless the agent or employee has full power for the negotiation and concluding of contracts on behalf of an enterprise and also habitually exercises this power in that other State or has a stock of merchandise belonging to the enterprise of the other State from which he regularly fills orders on behalf of the enterprise. An enterprise of one of the contracting States shall not be deemed to have a permanent establishment in the other State merely because it carries on business dealings in such other State through a commission agent, broker, custodian or other independent agent, acting in the ordinary course of his business as such. The fact that an enterprise of one of the contracting States maintains in the other State a fixed place of business exclusively for the purchase of

goods and merchandise shall not of itself constitute such fixed place of business a permanent establishment of the enterprise. The maintenance within the territory of one of the contracting States by an enterprise of the other contracting State of a warehouse for convenience of delivery and not for purposes of display shall not of itself constitute a permanent establishment within that territory. The fact that a corporation of one contracting State has a subsidiary corporation which is a corporation of the other State or which is engaged in trade or business in the other State shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation;

(g) The term “competent authorities” means, in the case of the United States, the Commissioner of Internal Revenue as authorized by the Secretary of the Treasury; and in the case of Austria, the Federal Ministry of Finance.

(2) For the purpose of the present Convention:

(a) Dividends paid by a corporation of one of the contracting States shall be treated as income from sources within such State.

(b) Interest paid by one of the contracting States, including any local government thereof, or by an enterprise of one of the contracting States not having a permanent establishment in the other contracting State shall be treated as income from sources within the former State.

(c) Income from real property (including gains derived from the sale or exchange of such property, but not including interest from mortgages or bonds secured by real property) and royalties in respect of the operation of mines, oil wells, or other natural resources shall be treated as income derived from the contracting State in which such real property, mines, oil wells or other natural resources are situated.

(d) Compensation for labor or personal services (including the practice of liberal professions) shall be treated as income from sources within the contracting State where are rendered the services for which such compensation is paid.

(e) Royalties for using, or for the right to use, in one of the contracting States, patents, copyrights, designs, trademarks and like property shall be treated as income from sources within such State.

(3) In the application of the provisions of this Convention by one of the contracting States any term not otherwise defined shall, unless the context otherwise requires, have the meaning which the term has under its own tax laws. For the purposes of this Convention the term “residence” in Austria

shall include the customary place of abode therein.

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ARTICLE VI

The rate of tax imposed by one of the contracting States upon dividends received from sources within such State by a resident or corporation or other entity of the other contracting State not having a permanent establishment in the former State shall not exceed 50 percent of the statutory rate of tax imposed on such dividends by such former State but such rate of tax shall not exceed 5 percent if the shareholder is a corporation controlling, directly or indirectly, at least 95 percent of the entire voting power in the corporation paying the dividend, and if not more than 25 percent of the gross income of such paying corporation is derived from interest and dividends, other than interest and dividends received from its own subsidiary corporations. Such reduction of the rate to five percent shall not apply if the relationship of the two corporations has been arranged or is maintained primarily with the intention of securing such reduced rate.

ARTICLE VII

Interest received from sources within one of the contracting States, on bonds, notes, debentures, securities or on any other form of indebtedness (exclusive of interest on debts secured by mortgages) by a resident or corporation or other entity of the other contracting State shall, in an amount not exceeding fair and reasonable consideration on indebtedness, be exempt from tax by the former State if such resident, corporation or other entity has no permanent establishment in such former State.

ARTICLE VIII

(1) Royalties and other amounts received as consideration for the right to use literary, musical or other copyrights, artistic and scientific works, patents, designs, plans, secret processes and formulae, trademarks, and other like property and rights (including rentals and like payments for the use of industrial, commercial or scientific equipment but not including motion picture film rentals) by a resident or a corporation or other entity of one of the contracting States from sources within the other contracting State shall, in an amount not exceeding fair and reasonable consideration for such right to use, be exempt from taxation by such other State if the recipient has no permanent establishment situated in such other State.

(2) The rate of tax imposed by one of the contracting States upon motion picture film

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rentals received from sources within such contracting State by a resident or corporation or other entity of the other contracting State not having a permanent establishment in the former State shall not exceed 50 percent of the statutory rate of tax imposed on such rentals but in any case shall not exceed 10 percent of the amount of such rentals.

ARTICLE IX

(1) Income from real property (including gains derived from the sale or exchange of such property and interest on mortgages secured by such property) and royalties in respect of the operation of mines, oil wells or other natural resources shall be taxable in the contracting State in which such property, mines, oil wells or other natural resources are situated.

(2) Where a resident or corporation or other entity of one of the contracting States derives any income coming within the scope of paragraph (1) from property within the other contracting State, the recipient may, for any taxable year, elect to be subject to the tax of such other contracting State on a net basis as if such resident, corporation or other entity were engaged in trade or business within such other State through a permanent establishment therein.

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ARTICLE XI

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(2) Private pensions and private life annuities which are from sources within one of the contracting States and are paid to individuals residing in the other contracting State shall be exempt from taxation by the former State.

(3) The term "pensions", as used in this Article, means periodic payments made in consideration for services rendered or by way of compensation for injuries received.

(4) The term "life annuities", as used in this Article, means a stated sum payable periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

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ARTICLE XIV

(1) Dividends and interest paid by an Austrian corporation (other than a United States corporation) shall be exempt from

United States tax where the recipient is a nonresident alien or a foreign corporation.

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ARTICLE XVI

(1) The competent authorities of the contracting States shall exchange such information (being information available under the respective taxation laws of the contracting States) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or the like in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the present Convention. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

(2) In no case shall the provisions of this Article be construed so as to impose upon either of the contracting States the obligation to carry out administrative measures at variance with the regulations and practice of either contracting State or which would be contrary to its sovereignty, security or public policy or to supply particulars which are not procurable under its own legislation or that of the State making application.

ARTICLE XVII

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(2) Should any difficulty or doubt arise as to the interpretation or application of the present Convention or its relationship to Conventions of the contracting States with third States the competent authorities of the contracting States may settle the question by mutual agreement.

ARTICLE XVIII

(1) The provisions of this Convention shall not be construed to deny or affect in any manner the right of diplomatic and consular officers to other or additional exemptions now enjoyed or which may hereafter be granted to such officers.

(2) The provisions of the present Convention shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance now or hereafter granted by the laws of one of the contracting States in the determination of the tax imposed by such State.

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ARTICLE XIX

(1) The competent authorities of the two contracting States may prescribe regulations necessary to carry into effect the present Convention within the respective States.

(2) The competent authorities of the two contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Convention.

ARTICLE XX

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Vienna as soon as possible. The Convention shall have effect on and after the first day of January of the calendar year in which such exchange takes place.

(2) The present Convention shall remain in force indefinitely, but may be terminated by either of the contracting States, provided that at least six months' prior notice of termination has been given through diplomatic channels. In such event, the present Convention shall cease to be effective for the taxable years beginning on or after the first day of January next following the expiration of the six-month period.

(b) *Meaning of terms.* As used in §§ 516.1 to 516.12, any term defined in the convention shall have the meaning so assigned to it; any term not so defined shall, unless the context otherwise requires, have the meaning which such term has under the internal revenue laws of the United States.

§ 516.2 Dividends; general rules.

(a) *Paid by an Austrian corporation.* Dividends paid on or after January 1, 1957, by an Austrian corporation which is not a United States corporation are exempt from United States tax under the provisions of Article XIV (1) of the convention if the recipient is a nonresident alien or a foreign corporation.

(b) *50 percent of statutory rate—(1) In general.* Article VI of the convention provides that the rate of United States tax imposed upon dividends received from sources within the United States on or after January 1, 1957, by a nonresident alien individual who is a resident of Austria, or by an Austrian corporation or other entity, shall not exceed 50 percent of the statutory rate of tax imposed on such dividends by the United States if such alien, corporation, or other entity has not had a permanent establishment in the United States at any time during the taxable

year in which such dividends are received. This subparagraph does not apply to dividends falling within the scope of paragraph (a) or (c) of this section.

(2) *Personal services.* If a nonresident alien individual who is a resident of Austria performs personal services within the United States during the taxable year, but has at no time during such year a permanent establishment within the United States, he is entitled to the reduced rate of tax on dividends prescribed by subparagraph (1) of this paragraph, even though under the provisions of section 871(c) of the Internal Revenue Code of 1954 he has engaged in trade or business within the United States during such year by reason of his having performed personal services therein.

(c) *Dividends paid by a related corporation—(1) Rate of 5 percent.* Under the provisions of Article VI of the convention, dividends received from sources within the United States on or after January 1, 1957, by an Austrian corporation which controls, directly or indirectly, at the time the dividend is paid, 95 percent or more of the entire voting power in the corporation paying the dividend are subject to United States tax at a rate not in excess of 5 percent if (i) not more than 25 percent of the gross income of the paying corporation for the 3-year period immediately preceding the taxable year in which the dividend is paid consists of dividends and interest (other than dividends and interest received by such paying corporation from its own subsidiary corporations, if any), (ii) the relationship between the paying corporation and the Austrian corporation has not been arranged or maintained primarily with the intention of securing the reduced rate of 5 percent, and (iii) the Austrian corporation at no time during the taxable year in which such dividends are received has had a permanent establishment within the United States. This subparagraph does not apply to dividends falling within the scope of paragraph (a) of this section.

(2) *Information to be filed with Commissioner.* Any corporation (hereinafter referred to as the claimant) which claims or contemplates claiming that dividends paid or to be paid by it are subject to a rate of United States tax not in excess of 5 percent shall file the following information with the Commissioner of Internal Revenue as soon as practicable: (i) the date and place of its organization; (ii) the number of outstanding shares of stock of the claimant having voting power and the voting power thereof; (iii) the person or persons beneficially owning such stock of the claimant and their relationship to the Austrian corporation; (iv) the amounts by years (for the 3-year period immediately preceding the taxable year in which the dividend is paid) of the gross income of the claimant, of the interest and dividends included in such gross income, and of the interest and dividends received by the claimant from its own subsidiary corporations, if any; and (v) the relationship between the claimant and the Austrian corporation receiving the dividend.

(3) *Notification by Commissioner.* As soon as practicable after such information is filed, the Commissioner will determine whether the dividends concerned qualify under Article VI of the convention for a rate of tax not in excess of 5 percent and will notify the claimant of his determination. If the dividends do qualify for such reduced rate, this notification may also authorize the release, pursuant to § 516.9(a)(3), of excess tax withheld from the dividends concerned.

(d) *Withholding of United States tax from dividends—*(1) *Exempt from withholding.* No withholding of United States tax is required in the case of dividends paid by an Austrian corporation which, in accordance with paragraph (a) of this section, are exempt from United States tax.

(2) *50 percent of statutory rate—*(i) *In general.* Withholding of tax at source on or after January 1, 1958, in the case of dividends (other than dividends falling within the scope of subparagraph (1) or (3) of this paragraph) received from sources within the United States by a nonresident alien or by a foreign corporation or other entity, whose address is in Austria, shall, to the extent

withholding of United States tax is required, be at the rate of 50 percent of the statutory rate in every case except that in which, prior to the date of payment of such dividends, the Commissioner of Internal Revenue has notified the withholding agent that the reduced rate of withholding shall not apply.

(ii) *Effect of address in Austria.* For the purposes of this subparagraph, every nonresident alien whose address is in Austria shall be deemed by United States withholding agents to be a nonresident alien individual who is a resident of Austria not having a permanent establishment within the United States; and every foreign corporation or other entity whose address is in Austria shall be deemed by such withholding agents to be an Austrian corporation or other entity not having a permanent establishment within the United States.

(iii) *Reduced rate applicable to owner only.* This subparagraph is based on the assumption that the payee of the dividend is the actual owner of the capital stock from which the dividend is derived. As to action by a recipient who is not the owner, see § 516.3.

(iv) *Statutory rate.* As used in this subparagraph, the term “statutory rate” means the rate (30 percent as of the date of approval of this Treasury decision) prescribed with respect to dividends by chapter 3 of the Internal Revenue Code of 1954 as though the convention had not come into effect.

(v) *Nonresident alien.* The term “nonresident alien”, as used in this subparagraph, includes nonresident alien individuals, fiduciaries, and partnerships.

(3) *Rate of 5 percent.* If, in accordance with paragraph (c)(3) of this section, the Commissioner of Internal Revenue has notified the claimant corporation that the dividends qualify under Article VI of the convention for a rate of tax not in excess of 5 percent, the reduced withholding rate of 5 percent, to the extent withholding of United States tax is required, shall apply on or after January 1, 1958, to any dividends subsequently paid by such corporation and received by the

Austrian corporation, unless (i) the stock ownership of the claimant corporation materially changes, (ii) the character of the income of the claimant corporation materially changes, or (iii) the Commissioner determines that the relationship between the two corporations concerned is being maintained primarily with the intention of securing the reduced rate of United States tax. In such instance, if such change in stock ownership or character of income occurs, the claimant corporation shall promptly notify the Commissioner of the then existing facts with respect thereto. The continued application of the rate not in excess of 5 percent is also dependent upon the continued fulfillment of paragraph (c)(1)(iii) of this section.

(4) *Evidence of tax withheld.* The rate at which United States tax has been withheld from any dividend paid at any time after the expiration of the thirtieth day after the date on which §§ 516.1 to 516.12 are published in the FEDERAL REGISTER to any person whose address is in Austria at the time the dividend is paid shall be shown either in writing or by appropriate stamp on the check, draft, or other evidence of payment, or on an accompanying statement.

§ 516.3 Dividends received by addressee not actual owner.

(a) *Additional tax to be withheld—(1) Nominee or representative.* If the recipient in Austria of any dividend from which tax has been withheld at a reduced rate pursuant to § 516.2(d)(2) is a nominee or representative through whom the dividend is received by a person other than one described in § 516.2(b), such nominee or representative shall withhold an additional amount of United States tax equivalent to the United States tax which would have been withheld if the convention had not been in effect (30 percent as of the date of approval of §§ 516.1 to 516.12) minus the amount which has been withheld at the source.

(2) *Fiduciary or partnership.* If a fiduciary or a partnership with an address in Austria receives, otherwise than as a nominee or representative, a dividend from which United States tax has been withheld at a reduced rate pursuant to § 516.2(d)(2), such fiduciary or partner-

ship shall withhold an additional amount of United States tax from the portion of the dividend included in the gross income from sources within the United States of any beneficiary or partner, as the case may be, who is not entitled to the reduced rate of tax in accordance with § 516.2(b). The amount of the additional tax is to be calculated in the same manner as under subparagraph (1) of this paragraph.

(3) *Released amounts of tax.* If any amount of United States tax is released pursuant to § 516.9(a)(2) by the withholding agent in the United States with respect to a dividend paid to such a person (nominee, representative, fiduciary, or partnership) with an address in Austria, the latter shall withhold from such released amount any additional amount of United States tax, otherwise required to be withheld from the dividend by the provisions of subparagraphs (1) and (2) of this paragraph, in the same manner as if at the time of payment of the dividend United States tax at the reduced rate prescribed by § 516.2(d)(2) had been withheld at source from such dividend.

(b) *Returns filed by Austrian withholding agents.* The amounts withheld pursuant to paragraph (a) of this section by any withholding agent in Austria shall be deposited, without converting the amounts into United States dollars, with the Austrian Federal Ministry of Finance on or before the 15th day after the close of the quarter of the calendar year in which the withholding in Austria occurs. The withholding agent making the deposit shall render therewith such appropriate Austrian form as may be prescribed by the Federal Ministry of Finance. The amounts so deposited should be remitted by the Federal Ministry of Finance by draft in United States dollars, on or before the end of the calendar month in which the deposit is made, to the Director of International Operations, Internal Revenue Service, Washington, D.C., U.S.A. The remittance should be accompanied by such Austrian forms as may be required to be rendered by the withhold-

ing agent in Austria in connection with the deposit.

§ 516.4 Interest.

(a) *Paid by Austrian corporation.* Interest paid on or after January 1, 1957, by an Austrian corporation which is not a United States corporation is exempt from United States tax under the provisions of Article XIV(1) of the convention if the recipient is a nonresident alien or a foreign corporation. Such exempt interest is not subject to the withholding of United States tax at source.

(b) *Other interest.* Interest on bonds, notes, debentures, securities, or on any other form of indebtedness, including interest on obligations of the United States and its instrumentalities but not including interest on debts secured by mortgages, which is received from sources within the United States on or after January 1, 1957, by a nonresident alien individual who is a resident of Austria, or by an Austrian corporation or other entity, is exempt, in an amount not exceeding a fair and reasonable consideration on the indebtedness, from United States tax under the provisions of Article VII of the convention if such alien, corporation, or other entity at no time during the taxable year in which such interest is received has a permanent establishment in the United States. This paragraph does not apply to the interest which is exempt from United States tax in accordance with paragraph (a) of this section.

(c) *Personal services.* If a nonresident alien individual who is a resident of Austria performs personal services within the United States during the taxable year, but has at no time during such year a permanent establishment in the United States, he is entitled to the interest exemption prescribed by paragraph (b) of this section even though under the provisions of section 871(c) of the Internal Revenue Code of 1954 he has engaged in trade or business within the United States during such year by reason of his having performed personal services therein.

(d) *Exemption from withholding of United States tax—(1) Coupon bond interest—(i) Form to use.* To avoid withholding of United States tax at source on or after January 1, 1958, in the case of

coupon bond interest to which paragraph (b) of this section applies, the nonresident alien individual who is a resident of Austria, or the Austrian corporation or other entity, shall, for each issue of bonds, file Form 1001-A in duplicate when presenting the interest coupons for payment. This form shall be signed by the owner of the interest, or by his trustee or agent, and shall show the information required by § 1.1461-1(d) of this chapter. It shall contain a statement that the owner (a) is a resident of Austria, or is an Austrian corporation or other entity, and (b) has no permanent establishment in the United States.

(ii) *Exemption applicable only to owner.* The exemption from United States tax contemplated by Article VII of the convention, insofar as it concerns coupon bond interest, is applicable only to the owner of the interest. The person presenting the coupon, or on whose behalf it is presented, shall, for the purpose of the exemption from United States tax, be deemed to be the owner of the interest only if he is, at the time the coupon is presented for payment, the owner of the bond from which the coupon has been detached. If the person presenting the coupon, or on whose behalf it is presented, is not the owner of the bond, Form 1001, and not Form 1001-A, shall be executed.

(iii) *Disposition of form.* The original and duplicate of Form 1001-A shall be forwarded by the withholding agent to the Director of International Operations, Internal Revenue Service, Washington 25, D.C., in accordance with § 1.1461-2(b)(2) of this chapter.

(2) *Interest on noncoupon bonds—(i) Notification by letter.* To avoid withholding of United States tax at source on or after January 1, 1958, in the case of interest (other than coupon bond interest) to which paragraph (b) of this section applies, the nonresident alien individual who is a resident of Austria, or the Austrian corporation or other entity, shall notify the withholding agent by letter in duplicate that the interest is exempt from United States tax under the provisions

of Article VII of the convention. The letter of notification shall be signed by the owner of the interest, or by his trustee or agent, and shall show the name and address of the obligor and the name and address of the owner of the interest. It shall contain a statement (a) that the owner is neither a citizen nor a resident of the United States but is a resident of Austria, or, in the case of a corporation or other entity, that the owner is an Austrian corporation or other entity, and (b) that the owner has at no time during the current taxable year had a permanent establishment in the United States.

(ii) *Use of letter for release of excess tax.* If the letter is also to be used as authorization for the release, pursuant to § 516.9(a)(5), of excess tax withheld from such interest, it shall also contain a statement (a) that, at the time when the interest was received from which the excess tax was withheld, the owner was neither a citizen nor a resident of the United States but was a resident of Austria, or, in the case of a corporation or other entity, the owner was an Austrian corporation or other entity, and (b) that the owner at no time during the taxable year in which such interest was received had a permanent establishment in the United States.

(iii) *Manner of filing letter.* The letter of notification, which shall constitute authorization for the payment of the interest without withholding of United States tax at source, shall be filed with the withholding agent for each successive 3-calendar-year period during which the interest is paid. For this purpose, the first such period shall commence with the beginning of the calendar year in which the interest is first paid on or after January 1, 1958. Each letter filed with any withholding agent shall be filed not later than 20 days preceding the date of the first payment within each successive period, or, if that is not possible because of special circumstances, as soon as possible after such first payment. Once a letter has been filed in respect of any 3-calendar-year period, no additional letter need be filed in respect thereto unless the Commissioner of Internal Revenue notifies the withholding agent that an ad-

ditional letter shall be filed by the taxpayer. If, after filing a letter of notification, the taxpayer ceases to be eligible for the exemption from United States tax granted by Article VII of the convention, he shall promptly notify the withholding agent by letter in duplicate. When any change occurs in the ownership of the interest as recorded on the books of the payer, the exemption from withholding of United States tax shall no longer apply unless the new owner of record is entitled to and does properly file a letter of notification with the withholding agent.

(iv) *Disposition of letter.* Each letter of notification, or the duplicate thereof, shall be immediately forwarded by the withholding agent to the Director of International Operations, Internal Revenue Service, Washington 25, D.C.

(3) *Reasonableness of consideration.* For purposes of this paragraph, the withholding agent may, unless he has information to the contrary, presume that the interest represents a fair and reasonable consideration on the indebtedness involved.

§ 516.5 Patent and copyright royalties and film rentals.

(a) *Items exempt from tax—(1) In general.* Royalties and other amounts received from sources within the United States on or after January 1, 1957, by a nonresident alien individual who is a resident of Austria or by an Austrian corporation or other entity, as consideration for the right to use literary, musical or other copyrights, artistic and scientific works, patents, designs, plans, secret processes and formulae, trademarks, and other like property and rights (including rentals and like payments for the use of industrial, commercial, or scientific equipment but not including motion picture film rentals) are, in an amount not exceeding a fair and reasonable consideration for such right, exempt from United States tax under the provisions of Article VIII(1) of the convention if such alien, corporation, or other entity has not had a permanent establishment in the United States at any time during the taxable year in which such items are received.

(2) *Exemption from withholding of United States tax*—(i) *Notification by letter*. To avoid withholding of United States tax at source on or after January 1, 1958, in the case of the items of income to which this paragraph applies, the nonresident alien individual who is a resident of Austria, or the Austrian corporation or other entity, shall notify the withholding agent by letter in duplicate that the income is exempt from United States tax under the provisions of Article VIII(1) of the convention.

(ii) *Manner of filing letter*. The provisions of § 516.4(d)(2) relating to the execution, filing, effective period, and disposition of the letter of notification prescribed therein, including its use for the release of excess tax withheld, are equally applicable with respect to the income falling within the scope of this paragraph.

(iii) *Reasonableness of consideration*. For purposes of this subparagraph, the withholding agent may, unless he has information to the contrary, presume that the royalty or other like amount represents a fair and reasonable consideration for the right involved.

(b) *Motion picture film rentals*—(1) *Reduced rate*. Under Article VIII(2) of the convention, the rate of United States tax imposed upon motion picture film rentals received from sources within the United States on or after January 1, 1957, by a nonresident alien individual who is a resident of Austria, or by an Austrian corporation or other entity, shall not exceed the lesser of (i) 50 percent of the statutory rate of tax imposed on such rentals by the United States or (ii) 10 percent of the gross amount of such rentals, if such alien, corporation, or other entity at no time during the taxable year in which such rentals are received has a permanent establishment in the United States.

(2) *Reduction in rate of withholding of United States tax*—(i) *Notification by letter*. To secure withholding of United States tax at source on or after January 1, 1958, at the reduced rate (10 percent, as of the date of approval of §§ 516.1 to 516.12, of the gross amount of the rentals) in the case of the motion picture film rentals to which this paragraph applies, the nonresident alien individual who is a resident of Austria,

or the Austrian corporation or other entity, shall notify the withholding agent by letter in duplicate that the rentals are subject to United States tax at the reduced rate under the provisions of Article VIII(2) of the convention.

(ii) *Manner of filing letter*. The provisions of § 516.4(d)(2) relating to the execution, filing, effective period, and disposition of the letter of notification prescribed therein, including its use for the release of excess tax withheld, are equally applicable with respect to the rentals falling within the scope of this paragraph except that the release of excess tax withheld from such rentals shall be made in accordance with § 516.9(a)(6).

§ 516.6 Private pensions and private life annuities.

(a) *Exemption from tax*. Private pensions and private life annuities which are from sources within the United States and are paid on or after January 1, 1957, to a nonresident alien individual who is a resident of Austria are exempt from United States tax under the provisions of Article XI (2) of the convention.

(b) *Exemption from withholding of United States tax*—(1) *Notification by letter*. To avoid withholding of United States tax at source on or after January 1, 1958, in the case of the items of income to which this section applies, the nonresident alien individual who is a resident of Austria shall notify the withholding agent by letter in duplicate that the income is exempt from United States tax under the provisions of Article XI (2) of the convention. The letter of notification shall be signed by the owner of the income, shall show the name and address of both the payer and the owner of the income, and shall contain a statement that the owner, an individual, is neither a citizen nor a resident of the United States but is a resident of Austria.

(2) *Use of letter for release of tax*. If the letter is also to be used as authorization for the release, pursuant to § 516.9(a)(5), of excess tax withheld

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from such items of income, it shall also contain a statement that the owner was, at the time when the income was paid from which the excess tax was withheld, neither a citizen nor a resident of the United States but was a resident of Austria.

(3) *Manner of filing letter.* The letter of notification shall constitute authorization for the payment of such items of income without withholding of United States tax at source unless the Commissioner of Internal Revenue subsequently notifies the withholding agent that the tax shall be withheld with respect to payments of such items of income made after receipt of such notice. If, after filing a letter of notification, the owner of the income ceases to be eligible for the exemption from United States tax granted by the convention in respect to such income, he shall promptly notify the withholding agent by letter in duplicate. When any change occurs in the ownership of the income as recorded on the books of the payer, the exemption from withholding of United States tax shall no longer apply unless the new owner of record is entitled to and does properly file a letter of notification with the withholding agent.

(4) *Disposition of letter.* Each letter of notification, or the duplicate thereof, shall be immediately forwarded by the withholding agent to the Director of International Operations, Internal Revenue Service, Washington, D.C.

(c) *Definitions.* As used in this section, the term “pensions” means periodic payments made in consideration for services rendered or by way of compensation for injuries received, and the term “life annuities” means a stated sum payable periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration in money or money’s worth. Neither term includes retired pay or pensions paid by the United States or by any State or Territory of the United States.

§ 516.7 Sources of income.

For determining the sources of income for purposes of §§ 516.1 to 516.12 see sections 861 to 864, inclusive, of the

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Internal Revenue Code of 1954 and Article II (2) of the convention.

§ 516.8 Beneficiaries of an estate or trust.

(a) *Entitled to benefit of convention.* If he otherwise satisfies the requirements of the respective articles concerned, a nonresident alien who is a beneficiary of an estate or trust shall be entitled to the exemption from, or reduction in the rate of, United States tax granted by Articles VI, VII, VIII, and XIV of the convention with respect to dividends, interest, and copyright royalties and other like amounts, to the extent that (1) any amount paid, credited, or required to be distributed by such estate or trust to such beneficiary is deemed to consist of such items, and (2) such items would, without regard to the convention, be includible in his gross income.

(b) *Withholding of United States tax.* In order to be entitled in such instance to the exemption from, or reduction in rate of, withholding of United States tax, the beneficiary must otherwise satisfy such requirements and shall, where applicable, execute and submit to the fiduciary of the estate or trust in the United States the appropriate letter of notification prescribed in §§ 516.4(d)(2), 516.5(a)(2) and (b)(2).

(c) *Amounts otherwise includible in gross income of beneficiary.* For the determination of amounts which, without regard to the convention, are includible in the gross income of the beneficiary, see subchapter J of chapter 1 of the Internal Revenue Code of 1954, and the regulations thereunder (§§ 1.641-1 to 1.692-1 of this chapter).

§ 516.9 Release of excess tax withheld at source.

(a) *Amounts to be released—(1) Dividends and interest paid by Austrian corporation.* If United States tax at the statutory rate has been withheld on or after January 1, 1958, from dividends and interest paid by an Austrian corporation (other than a United States corporation) to a recipient who is a nonresident alien or a foreign corporation, the withholding agent shall release and pay over to the person from whom the tax was withheld an

amount which is equal to the tax so withheld.

(2) *Dividends subject to 50 percent of statutory rate.* If United States tax at the statutory rate has been withheld on or after January 1, 1958, from dividends described in § 516.2(b) and received from sources within the United States by a nonresident alien (including a nonresident alien individual, fiduciary, and partnership) or by a foreign corporation or other entity, whose address at the time of payment was in Austria, the withholding agent shall release and pay over to the person from whom the tax was withheld an amount which is equal to the difference between the tax so withheld and the tax required to be withheld pursuant to § 516.2(d)(2).

(3) *Dividends subject to 5 percent rate.* If United States tax at the statutory rate has been withheld on or after January 1, 1958, from dividends which qualify under § 516.2(c)(1) for a rate of tax not in excess of 5 percent, the withholding agent shall, if so authorized in accordance with § 516.2(c)(3), release and pay over to the corporation from which the tax was withheld an amount which is equal to the difference between the tax so withheld and the tax required to be withheld pursuant to § 516.2(d)(3).

(4) *Coupon bond interest*—(i) *Substitute form.* In the case of every taxpayer who furnishes to the withholding agent Form 1001-A clearly marked "Substitute" and executed in accordance with § 516.4(d)(1)(i), where United States tax has been withheld at the statutory rate on or after January 1, 1958, from coupon bond interest exempt under § 516.4(b), the withholding agent shall release and pay over to the person from whom the tax was withheld an amount which is equal to the tax so withheld, if the taxpayer also attaches to such form a letter in duplicate, signed by the owner, or by his trustee or agent, and containing the following:

(a) The name and the address of the obligor;

(b) The name and the address of the owner of the interest from which the excess tax was withheld;

(c) A statement that, at the time when the interest was received from which the excess tax was withheld, the

owner was neither a citizen nor a resident of the United States but was a resident of Austria, or, in the case of a corporation or other entity, the owner was an Austrian corporation or other entity; and

(d) A statement that the owner at no time during the taxable year in which the interest was received had a permanent establishment in the United States. One such substitute form shall be filed in duplicate with respect to each issue of bonds and will serve with respect to that issue to replace all Forms 1001 previously filed by the taxpayer in the calendar year in which the excess tax was withheld and with respect to which such excess is released.

(ii) *Disposition of form.* The original and duplicate of substitute Form 1001-A (and letter) shall be forwarded by the withholding agent to the Director of International Operations, Internal Revenue Service, Washington, D.C., in accordance with § 1.1461-2(b) of this chapter.

(5) *Interest on noncoupon bonds, royalties, pensions, and annuities.* If a taxpayer furnishes to the withholding agent the authorization of release prescribed in § 516.4(d)(2)(ii), § 516.5(a)(2)(ii), or § 516.6(b)(2) and United States tax has been withheld at the statutory rate on or after January 1, 1958, from the interest, copyright royalties or other like amounts, pensions, or annuities in respect to which such authorization is prescribed, the withholding agent shall release and pay over to the person from whom the tax was withheld an amount which is equal to the tax so withheld.

(6) *Motion picture film rentals.* If a taxpayer furnishes to the withholding agent the authorization of release prescribed in § 516.5(b)(2)(ii) and United States tax has been withheld at the statutory rate on or after January 1, 1958, from the motion picture film rentals in respect to which such authorization is prescribed, the withholding agent shall release and pay over to the person from whom the tax was withheld an amount which is

equal to the difference between the tax so withheld and the tax required to be withheld pursuant to § 516.5(b)(2)(i).

(b) *Amounts not to be released.* The provisions of this section do not apply to excess tax withheld at source which has been paid by the withholding agent to the Director of International Operations.

(c) *Statutory rate.* As used in this section, the term “statutory rate” means the rate prescribed by chapter 3 of the Internal Revenue Code of 1954 as though the convention had not come into effect.

(d) *Amounts withheld during 1957.* For provisions respecting the refund of excess tax withheld during the calendar year 1957, see § 516.10.

§ 516.10 Refund of excess tax withheld during 1957.

(a) *In general.* Where United States tax withheld at the source during the calendar year 1957 from dividends, interest, copyright royalties and the like, motion picture film rentals, private pensions or private life annuities is in excess of the tax imposed under subtitle A (relating to the income tax) of the Internal Revenue Code of 1954, as modified by the convention, a claim by the taxpayer for refund of any overpayment resulting therefrom may be made under section 6402 of such Code and the regulations thereunder.

(b) *Form of claim*—(1) *Where return previously filed.* If the taxpayer has previously filed an income tax return with the Internal Revenue Service for the taxable year in which an overpayment has resulted because of the application of the convention, he should make a claim for refund of the overpayment by filing Form 843 or an amended return.

(2) *Where no return previously filed.* If the taxpayer has not previously filed an income tax return with the Internal Revenue Service for the taxable year in which an overpayment has resulted because of the application of the convention, he should make a claim for refund of the overpayment by filing Form 1040NB, Form 1040NB-a, Form 1040B, Form 1120, or Form 1120NB, whichever is applicable, showing the overpayment. Such return will serve as a claim for refund, and it will not be necessary for the taxpayer to file Form 843.

(c) *Information required.* If the taxpayer's total gross income (including every item of capital gain subject to tax) from sources within the United States for the taxable year in which such overpayment resulted has not been disclosed in an income tax return filed with the Internal Revenue Service prior to the time the claim for refund is made, the taxpayer shall disclose such total gross income with his claim. In the event that securities are held in the name of a person other than the actual or beneficial owner, the name and address of such person shall be furnished with the claim. In addition to such other information as may be required to establish the overpayment, there shall also be included in such claim for refund:

(1) A statement that, at the time when the item or items of income were received (or “paid”, in the case of private pensions and private life annuities) from which the excess tax was withheld, (i) the taxpayer was neither a citizen nor a resident of the United States but was a resident of Austria, or, in the case of a corporation or other entity, (ii) the taxpayer was an Austrian corporation or other entity; and

(2) A statement that the taxpayer at no time during the taxable year in which the income was received had a permanent establishment within the United States.

(d) *Exceptions*—(1) *Private pensions and private life annuities.* If the taxpayer is an individual who during the taxable year of overpayment received income from United States sources consisting exclusively of private pensions or private life annuities entitled to the benefit of Article XI (2) of the convention, the statement specified in paragraph (c)(2) of this section shall not be required.

(2) *Dividends paid by a related corporation.* As to additional information required in the case of an Austrian corporation claiming the benefit of the 5 percent rate on dividends paid by a related corporation, see § 516.2(c).

§ 516.11 Information to be furnished in ordinary course.

For provisions relating to the exchange of information under Article XVI of the convention, see § 1.1461-2(d) of this chapter.

§ 516.12 Taxable years beginning in 1956 and ending in 1957.

If, in the case of a taxable year beginning in 1956 and ending in 1957, a taxpayer has no permanent establishment in the United States at any time during that part of the taxable year which follows December 31, 1956, then he shall, for purposes of §§ 516.1 to 516.12 be deemed not to have had a permanent establishment in the United States at any time during the taxable year.

PART 517—PAKISTAN**Subpart—Withholding of Tax**

Sec.

517.1 Introductory.

517.2 Dividends paid by, or to, a Pakistan company.

517.3 Patent and copyright royalties.

517.4 Private pensions and annuities.

517.5 Interest derived by the State Bank of Pakistan.

517.6 Beneficiaries of a domestic estate or trust.

517.7 Release of excess tax withheld at source.

517.8 Information to be furnished in ordinary course.

517.9 Application of the convention to fiscal years.

AUTHORITY: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805.

SOURCE: Treasury Decision 6431, 24 FR 10100, Dec. 15, 1959; 25 FR 14022, Dec. 31, 1960, unless otherwise noted.

Subpart—Withholding of Tax**§ 517.1 Introductory.**

(a) *Pertinent provisions of the convention.* The income tax convention between the United States and Pakistan, signed on July 1, 1957, referred to in §§ 517.1 to 517.9 as the convention, provides in part as follows, effective for taxable years beginning on or after January 1, 1959:

ARTICLE I

(1) The taxes which are the subject of the present Convention are:

(a) In the United States of America: The Federal income taxes, including surtaxes (hereinafter referred to as United States tax)..

(b) In Pakistan: The income tax, supertax and the business profits tax (hereinafter referred to as Pakistan tax).

(2) The present Convention shall also apply to any other taxes of a substantially similar character (including excess profits tax) imposed by either contracting State after the date of signature of the present Convention, or by the Government of any territory to which the present Convention is extended under Article XVIII.

ARTICLE II

(1) In the present Convention, unless the context otherwise requires:

(a) The term "United States" means the United States of America and when used in a geographical sense means the States thereof, the Territories of Alaska and Hawaii and the District of Columbia;

(b) The term "Pakistan" means the Provinces of Pakistan and the Capital of the Federation;

(c) The terms "one of the contracting States" and "the other contracting State" mean the United States or Pakistan, as the context requires;

(d) The term "tax" means United States tax, or Pakistan tax, as the context requires;

(e) The term "person" includes any body of persons, corporate or not corporate;

(f) The term "company" means any body corporate or not corporate, assessed as a company under Pakistan law relating to Pakistan tax;

(g) The term "United States corporation" means a corporation, association or other like entity created or organized in the United States or under the law of the United States or of any State or Territory of the United States;

(h) The term "resident of the United States" means any individual or fiduciary who is resident in the United States for the purposes of the United States tax, and not resident in Pakistan for the purposes of the Pakistan tax, and any United States corporation or any partnership created or organized in the United States or under the laws of the United States, being a corporation or partnership which is not resident in Pakistan for the purposes of Pakistan tax;

(i) The term "resident of Pakistan" means any person (other than a citizen of the United States or a United States corporation) who is resident in Pakistan for the purposes of Pakistan tax and not resident in the United States for the purposes of the